

Application No.: 09/715294  
Docket No.: CL1127 US CIP 1

Page 9

### REMARKS

Claims 39-41, 43, 70, and 80-86 are in the case. Claims 82 and 84 are allowed. Claims 42 and 86 are objected to. Claims 39-41, 43, 70, 80, 81, 83, and 85 are rejected under 35 USC § 103 for reasons of record.

Claims 40, 41, 42, 70, 80, 85, and 86 have been canceled.

Claims 39, 43, 81, 82, 83, and 84 have been amended to more clearly define Applicants' invention. No new matter has been added as a result of these amendments.

Applicants thank the examiner for his time at the interview held on the telephone on July 27, 2005. The amendments and comments herein reflect the content of that interview. Additionally Applicant gratefully acknowledges the withdrawal of the rejections of claims 39-43, 70 and 80-86 under 35 USC § 112, 1<sup>st</sup> paragraph.

### *Claim Objections*

Claim 42 is objected to as being dependent on a rejected base claim, but would be allowable if rewritten in independent form including all the limitations of the base claim.

Claim 42 has been canceled and rewritten as new claim 87.

Claim 86 is objected to under 37 CFR 1.75 as being duplicative of Claim 82. Claim 86 has been canceled.

In view of these amendments Applicants respectfully request removal of the above objections.

### *Claim Rejections – 35 USC § 103*

Claims 39-41, 43, 70, 80, 81, 83, and 85 remain rejected under 35 USC § 103 as being unpatentable over Odell et al. "A" (*Mol. Gen. Genet.* 223: 369-378 (1990)), in combination with Lloyd et al. (*Mol. Gen. Genet.* 242: 653-657 (1994)), Applicants' admitted state of the prior art, and Odell et al. "B" (Use of Site-Specific Recombination Systems in Plants, in Homologous Recombination and Gene Silencing in Plants; Paszkowski, J., Ed.; Kluwer: Dordrecht, Germany, 1994; pp 219-270) for reasons of record.

Claims 40, 41, 42, 70, 80, 85, and 86 have been canceled, leaving claims 39, 43, 81 and 83 as subject to this rejection.

Claim 39 has been amended to include the limitations that P1 is a germline promoter, the P2 is a floral germline promoter, and that neither P3 nor P4 are expressed in floral tissue. In view of the allowance of claim 82 defining non-floral expression of traits in 2d generation tissue, applicants submit that these amendments render claim 39 allowable and non-obvious over the cited art, in that the art does not suggest or teach non-floral expressed traits in 2d generation tissue using multiple site specific recombinase systems.

Claim 43 now depends only from, and narrows, claim 84 which has been allowed.

Application No.: 09/715294  
Docket No.: CL1127 US CIP 1

Page 10

Claim 81 has been amended to limit the method to expression in somatic tissue of a second generation plant, where P1 is a germline promoter, P2 is a floral germline promoter, and that the transgene encodes a somatic trait that is expressed in somatic tissue. In view of the allowance of claim 82 defining non-floral expression of traits in 2d generation tissue, applicants submit that claim 81 is allowable and non-obvious over the cited art, in that the art does not suggest or teach non-floral expressed traits in 2d generation tissue using multiple site specific recombinase systems. Support for the amendments adding the limitations specific to expression in somatic tissue can be found in the description of transgenes in somatic tissue on page 28 of the specification which states:

"Transgenes can encode functional RNAs or foreign proteins. Foreign proteins will typically encode proteins that may be foreign to plant hosts. Such foreign proteins will include, for example, enzymes for primary or secondary metabolism in plants, proteins that confer disease or herbicide resistance, commercially useful non-plant enzymes, and proteins with desired properties useful in animal feed or human food. Additionally, foreign proteins encoded by the transgenes will include seed storage proteins with improved nutritional properties, such as the high-sulfur 10 kD corn seed protein or high-sulfur zein proteins. Additional examples of a transgene suitable for use in the present invention include genes for disease resistance (e.g., gene for endotoxin of *Bacillus thuringiensis*, WO 92/20802)), herbicide resistance (mutant acetolactate synthase gene, WO 92/08794)), seed storage protein (e.g., glutelin gene, WO 93/18643)), fatty acid synthesis (e.g., acyl-ACP thioesterase gene, WO 92/20236)), cell wall hydrolysis (e.g., polygalacturonase gene (D. Grierson et al., *Nucl. Acids Res.*, vol.14, p.8595, 1986)), anthocyanin biosynthesis (e.g., chalcone synthase gene (H. J. Reif et al., *Mol. Gen. Genet.*, vol.199, p.208, 1985)), ethylene biosynthesis (e.g., ACC oxidase gene (A. Slater et al., *Plant Mol. Biol.*, vol.5, p.137, 1985)), active oxygen-scavenging system (e.g., glutathione reductase gene (S. Greer & R. N. Perham, *Biochemistry*, vol.25, p.2736, 1986)), and lignin biosynthesis (e.g., phenylalanine ammonia-lyase gene, cinnamyl alcohol dehydrogenase gene, o-methyltransferase gene, cinnamate 4-hydroxylase gene, 4-coumarate-CoA ligase gene, cinnamoyl CoA reductase gene (A. M. Boudet et al., *New Phytol.*, vol.129, p.203, 1995)). "

Claim 83 has been amended in a similar fashion to Claim 81, including the limitations of somatic tissue expression.

For clarification the Applicant provides the following chart illustrating the relationship between the various claims as now amended.

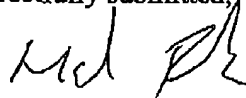
<b><i>P3 (P4) promoter</i></b>	<b><i>2<sup>nd</sup> generation Tissue where trait is expressed</i></b>	<b><i>By Transformation</i></b>	<b><i>By Cross</i></b>
Non-floral P3	Non-floral	Claim 82	Claim 84
At least somatic P3	Somatic	Claim 81	Claim 83
Seed P3	Seed	Claim 87	
Non-floral P3, P4	Non-floral	Claim 39	

Application No.: 09/715294  
Docket No.: CL1127 US CIP 1

Page 11

In view of the foregoing, Applicant respectfully requests withdrawal of all rejections and allowance of all claims

Respectfully submitted,



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